

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

RUDY LEMUS, et al.,

Plaintiffs,

vs.

BURNHAM PAINTING AND DRYWALL  
 CORPORATION, et al.,

Defendants.

Case No. 2:06-cv-01158-RCJ-PAL

**ORDER**

At a hearing conducted June 5, 2007 on plaintiffs' Motion for Collective Action Class Certification (#40), the court orally announced the motion was granted in part and denied in part. The court required counsel for the parties to meet and confer in an effort to arrive at a mutually agreeable form of notice of pendency of collective action and submit any stipulation the parties agreed upon by June 15, 2007. In the event the parties were unable to agree on a proposed notice, counsel were ordered to submit their competing proposals no later than June 15, 2007. Counsel submitted a Stipulation and Order Regarding Proposed Notice of Pendency of Collective Action Lawsuit (#68) which memorialized the terms of the notice they had agreed upon which the court has now approved. Having reviewed and considered the parties' competing Proposals (##69, 70), the court Orders Notice of Pendency of Collective Action Lawsuit in the form set forth below:

**NOTICE OF PENDENCY OF COLLECTIVE ACTION LAWSUIT**

**TO:** All painters who were paid on a piece-rate basis and who performed services for Burnham Painting and Drywall Corp. between June 6, 2004 and the present, or  
 All painters who were paid on a piece-rate basis and who performed services for Centennial Drywall Systems, Inc. between June 6, 2004 and the present.

1 **RE:** Fair Labor Standards Act of 1938, as amended, 29 U.S.C. section 201, *et seq.*

2 Introduction

3 The U.S. District Court for the District of Nevada has ordered that this Notice be sent to you.  
4 The purpose of this Notice is to: 1) inform you of the existence of a lawsuit in which you are potentially  
5 “similarly situated” to the named Plaintiffs; 2) advise you of how your rights may be affected by this  
6 lawsuit; and 3) instruct you on the procedure for participating in this lawsuit.

7 This Notice is not an expression by the Court of any opinion as to the merits of any claims or  
8 defenses asserted by any party to this action.

9 Description of the Lawsuit

10 In September 2006, Rudy Lemus, Manuel Lopez Zarate, Arturo Carreno Garcia, Norma Uribe,  
11 and Lino Calderon Mendoza (hereinafter referred to as “Plaintiffs”) brought this lawsuit against  
12 Burnham Painting and Drywall, Corp., Lule T. Burnham, Centennial Drywall Systems, Inc., and Pulte  
13 Homes Corp. (hereinafter referred to as “Defendants”) on behalf of themselves and certain other past  
14 and present painters who were paid on a piece-rate basis and who performed services for Burnham  
15 Painting and Drywall Corp. and/or Centennial Drywall Systems, Inc. Specifically, Plaintiffs allege that  
16 they are owed pay at one and one-half times their regular rate for all hours over forty (40) per week in  
17 which they worked. Plaintiffs also seek as liquidated damages an amount equal to their unpaid  
18 compensation and attorneys’ fees and costs. Defendants deny any wrongdoing or liability and  
19 vigorously contest all claims that have been asserted.

20 Composition of the Class

21 The named Plaintiffs seek to sue on behalf of themselves and also on behalf of other workers  
22 with whom they are similarly situated. Specifically, Plaintiffs seek to sue on behalf of any and all  
23 painters who:

- 24 1) Performed services for Burnham Painting and Drywall Corp. or Centennial Drywall  
25 Systems, Inc., between June 6, 2004 and the present; and
- 26 2) Were paid on a piece-rate basis; and
- 27 3) Did not receive all overtime pay (time and one-half) for any hours they worked over  
28 forty (40) hours per week, or did not receive at least a minimum wage of \$5.15 an hour.

*Your Right to Participate in the FLSA Portion of this Suit*

If you fit the definition above, you may join the FLSA portion of this suit by mailing the enclosed "Consent to Become Party Plaintiff" form to the Claims Administrator. The form should be signed and dated and returned to the Claims Administrator in the enclosed envelope at the following address:

Lemus et al v. Burnham Painting and Drywall Corp. et al  
c/o Desmond, Marcello & Amster  
P.O. Box 451999  
Los Angeles, CA 90045

The consent form must be sent to the Claims Administrator in sufficient time to have Plaintiffs' counsel file it with the Federal Court on or before **[THIS DATE IS TO BE INSERTED AT A LATER TIME. HOWEVER, THE PARTIES HAVE AGREED THAT THIS DATE WILL BE 45 DAYS FROM THE DATE THE NAMES AND ADDRESSES OF POTENTIAL CLASS MEMBERS ARE DISCLOSED]**. Either the English or Spanish version of the consent form may be filed. If you fail to return the consent form to the Claims Administrator in time for it to be filed with the Federal Court, you will not be able to participate in the FLSA portion of this lawsuit.

Please also complete the personal information sheet enclosed. Neither the consent form nor the information on the personal sheet will be disclosed or used for any purposes outside of this lawsuit. The information will be used to establish that you are similarly situated to the named Plaintiffs and ensure that Plaintiffs' counsel is able to communicate with you regarding the status of the case.

*Effect of Joining This Suit*

If you choose to join in the suit, you will be bound by the decision of the Court, whether it is favorable or unfavorable.

If you choose to join in the suit, you may be asked to: 1) appear for a deposition; 2) respond to written discovery; and/or 3) appear at a trial.

The attorneys for the named Plaintiffs and any Plaintiffs who choose to join this suit are being paid on a contingency fee basis, which means that if there is no recovery there will be no attorneys' fee. If the Plaintiffs prevail in this litigation, the attorneys for the class will request that the Court either

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1 determine or approve the amount of attorneys' fee and costs they are entitled to receive for their  
2 services.

3 If you return the consent form attached to this Notice, you are agreeing to designate the class  
4 representatives as your agents to make decisions on your behalf concerning: 1) this lawsuit; 2) the  
5 method and manner of conducting this lawsuit; 3) the entering of an agreement with Plaintiffs' counsel  
6 concerning attorneys' fees and costs; and 4) all other matters pertaining to this lawsuit. These decisions  
7 and agreements made and entered into by the representative Plaintiffs will be binding on you if you join  
8 this lawsuit. However, the Court has retained jurisdiction to determine the reasonableness of any  
9 settlement with the Defendants, and any agreement concerning the reasonableness of any attorneys' fees  
10 and costs that are to be paid to the Plaintiffs' counsel.

11 Legal Effect in Not Joining This Suit

12 You do not have to join this lawsuit. If you do not want to participate in this lawsuit, then do  
13 nothing. If you do not choose to join in this suit, you will not be affected by any judgment, dismissal,  
14 or settlement rendered in this lawsuit, whether favorable or unfavorable to the class. If you choose not  
15 to join in this lawsuit, you are free to file your own lawsuit under the FLSA. If you choose to file your  
16 own lawsuit, you will be responsible for all costs, including counsel fees, associated with your lawsuit.

17 No Retaliation Permitted

18 The Fair Labor Standards Act applies to all employees, regardless of their immigration status.  
19 All similarly situated employees of Burnham Painting and Drywall Corp. and Centennial Drywall  
20 Systems, Inc. are entitled to participate in this lawsuit even if the employee's work status is  
21 undocumented. Federal Law prohibits the Defendants from discharging you or in any other manner  
22 discriminating against you because you have exercised your rights under the FLSA to seek  
23 compensation.

24 Your Legal Representative If You Join

25 If you choose to join this lawsuit and agree to be represented by the named Plaintiffs through  
26 their attorneys, your counsel in this action will be:

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1 J. Felix De La Torre  
2 Weinberg, Roger & Rosenfeld  
3 520 J Street, Suite 520  
4 Sacramento, CA 95814

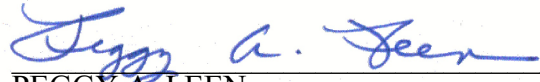
4 Further Information

5 Further information about this Notice, the deadline for filing a "Consent to Become a Party  
6 Plaintiff" or questions concerning this lawsuit may be obtained by writing, phoning or e-mailing  
7 Plaintiffs' counsel, J. Felix De La Torre, at Weinberg, Roger & Rosenfeld at:

8 Phone: (916) 443-6600  
9 Fax: (916) 442-0244  
Email: [fdelatorre@unioncounsel.net](mailto:fdelatorre@unioncounsel.net)

10 **IT IS SO ORDERED.**

11 Dated this 22nd day of June, 2007.

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14 PEGGY A. LEEN  
15 UNITED STATES MAGISTRATE JUDGE  
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